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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
08/951,832	10/16/97	LINA	C 06-2916.312

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EXAMINER

RUHL, D

ART UNIT

PAPER NUMBER

3761

34

DATE MAILED:

01/19/00

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
08/951,832

Applicant(s)
Lina et al.

Examiner
Dennis Ruhl

Group Art Unit
3761



☒ Responsive to communication(s) filed on Jan 3, 1999

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 1-15 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☒ Claim(s) 13 is/are allowed.

☒ Claim(s) 1-12, 14, and 15 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

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Applicant's amendment of 1-3-99 has been entered. The examiner will address applicant's remarks at the end of this office action.

1. Claims 2-8, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

With respect to claim 2, if claim 1 recites the filter as being interpose (between) the canister and pump then how can it be in the wall of the canister in claim 2? If it is in the wall of the canister it cannot be between the canister and the pump. This claim makes no sense because claim 2 contradicts claim 1. The scope of this claim is unclear and the most recent amendment has not overcome the indefiniteness of this claim.

With respect to claim 5, there is no antecedent basis for "the interior".

With respect to claim 8, this claim presents a combination subcombination problem. Applicant has claimed the combination of a pad and canister in claim 1. No dressing has been claimed in claim 1. Is the dressing part of the combination? If the dressing is part of the combination then it must be claimed in claim 1, not just in claim 8. If it is not part of the combination then this is an improper claim because it is not clear if the dressing is being claimed with the combination. The scope of this claim is unclear. Correction is required.

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

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(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371© of this title before the invention thereof by the applicant for patent.

3. Claims 1,3-6,9-12, are rejected under 35 U.S.C. 102(e) as being anticipated by Elson et al. (5466229).

With respect to claims 1,9,10, Elson discloses a pad 24, tube 22, canister 12 and pump 14. The pump, tube, pad, and canister are all in fluid communication with each other. The filter is 138. See column 10, lines 10-24. The fluid level sensor is 38. Elson discloses the sensor as being electrical which is what a capacitance sensor is. The pad is capable (is adapted) of being positioned as claimed.

With respect to claim 3, as best understood by the examiner (because of claim 2) the housing is 20.

With respect to claim 4, the canister is removably retained in a recess as claimed.

With respect to claim 5, see column 13, lines 33-42.

With respect to claim 6, Elson incorporates by reference patent no. 4747166 with respect to the material for the pad (column 13) . Because of this Elson discloses a polymer foam with interconnecting cells (the expanded cellulose microcellular material with an open cell construction). Cellulose is a polymer.

With respect to claim 11, Elson is capable of the claimed limitation. The device can be turned off and on for intermittent operation and can be left on for continuous operation.

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With respect to claim 12, the bleed device is 26. It is capable of releasing pressure as claimed.

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103© and potential 35 U.S.C. 102(f) or (g) prior art under 35 U.S.C. 103(a).

5. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Elson in view of Todd et al. (5437651).

Elson discloses the invention substantially as claimed. Elson does not disclose polyether foam with 95% interconnecting cells although Elson does disclose the use of a foam material. Todd discloses a fluid collection system that uses a pad 12 that is made from polyurethane foam. The examiner considers polyether foam and polyurethane foam to be the same thing. They are equivalents. It would have been obvious to one of ordinary skill in the art at the time the

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invention was made to use the foam of Todd in the system of Elson so that fluid can be readily collected by the void space in the foam.

6. Claims 14,15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nichols (4,460,361) in view of Holbrook (3,804,090). Nichols discloses the invention substantially as claimed. Nichols discloses a plastic container 14, inlet 40, outlet 18. See column 3, lines 36-42 for the disclosure of the bacterial filter. The examiner considers the deflector to be the portion of 40 that is protruding into the interior of container 14. Nichols does not disclose the container as having an anti-foaming substance in the container. Holbrook discloses a device that allows the addition of a foam reducing substance into a vacuum fluid collection system. Holbrook discloses that when collecting blood and other body fluids, the fluids may form a foam that will prevent accurate reading of the amount of collected fluid as well as possibly contaminating the vacuum pump with the foam. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container of Nichols with an anti-foaming substance as disclosed by Holbrook to help reduce the foaming of collected fluids so that accurate readings of the amount of fluid collected can be done, as well as preventing possible vacuum pump contamination.

7. Claim 15 is rejected under 35 U.S.C. 103(a) as being unpatentable over Nichols in view of Holbrook as applied to claim 14 above and further in view of Bryant et al. (5,234,419). Nichols discloses the invention substantially as claimed. Nichols does not disclose the container as having a gel forming substance that immobilizes collected fluid. Bryant discloses a suction system that

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has a waste treating material added into the container that includes a germicide and an absorbent powder. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the container of Nichols with a waste treating material as disclosed by Bryant so that the collected fluids can be treated with a germicidal agent as well as a powder absorbent to help immobilize collected fluids.

8. Claim 13 is allowed.

7. Applicant's arguments filed 1-3-99 have been fully considered but they are not persuasive.

With respect to the 112,2nd paragraph rejections the arguments are non-persuasive. With respect to claim 2, if claim 1 recites the filter as being interpose (between) the canister and pump then how can it be in the wall of the canister in claim 2? Applicant's amendment has not overcome the rejection and the problem is still present. With respect to claim 5, there is still no antecedent basis for the term "the interior". All applicant has to do is amend claim 1 or 5 to recite "an interior" or something to that affect to overcome the rejection. With respect to claim 8 and the combination/subcombination problem the arguments are non-persuasive. The dressing is clearly not a part of the combination as recited in claim 1. Applicant has even argued this in the response on page 3. It is then improper to claim the dressing in claim 8. The scope of claim 1 does not include the dressing so how can claim 8 include the dressing? With respect to the prior art rejection traversal (102 Elson) the arguments are no-persuasive. Applicant has argued that Elson does not disclose a "bacterial filter". In response the examiner refers applicant to column 10, lines 19-24, where it is disclosed that the

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filter 138 prevents liquid droplets of bacteria from entering the vacuum pump. Filter 138 is a bacterial filter. With respect to the 103 traversal of claim 7, applicant has only argued the primary reference and has not addressed the combination that is the basis for the 103. The argument is non-persuasive. Additionally applicant has attempted to introduce arguments by referencing the "Kuntz" reference. This reference is not relied upon for a prior art rejection and applicant's reference to any arguments is vague and does not clearly point out the novelty of the claims and how they define over the prior art. For all these reasons the arguments are non-persuasive. With respect to claims 14 and 15, applicant is again making reference to previous arguments and the examiner has no idea what the arguments are. What is "the arguments of August 27, 1999 and earlier"? What is earlier? This is vague and is a mere allegation of patentability without pointing out why the claims are patentable. The arguments are non-persuasive.


8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

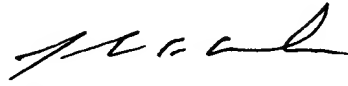
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Ruhl whose telephone number is (703) 308-2262.

Dennis Ruhl 
Assistant Examiner


John G. Weiss
Supervisory Patent Examiner
Group 3700